

HOUSE BILL 493

Unofficial Copy
M3

2004 Regular Session
(41r0200)

ENROLLED BILL

-- Environmental Matters/Education, Health, and Environmental Affairs --

Introduced by **Chairman, Environmental Matters Committee (By Request -
Departmental - Environment)**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Environment - Hazardous Material Security**

3 FOR the purpose of ~~requiring the Department of the Environment to establish~~
4 establishing a certain ~~fees~~ fee for certain hazardous material and related
5 facilities; providing for the payment of certain fees to a separate account in the
6 Community Right-to-Know Fund; specifying certain uses of certain funds
7 deposited to the Fund; requiring owners, lessees, and operators of certain
8 facilities involving certain hazardous materials to analyze the security at their
9 facilities in accordance with certain standards, report certain ~~measures~~
10 information, and pay a fee to the Department of the Environment on or before
11 certain dates; exempting counties and municipal corporations from the
12 requirement to submit certain fees; requiring the Department to ~~approve~~ adopt
13 a certain code or set of standards; requiring the Department to conduct certain
14 audits of certain facilities; requiring the Department to report certain violations
15 to the Department of State Police for enforcement; providing for the
16 confidentiality of certain documents except under certain circumstances;

1 prohibiting a person from knowingly submitting certain false information;
 2 establishing certain penalties for violations of this Act; defining certain terms;
 3 providing that this Act does not affect the availability of other penalties and
 4 remedies relieve a facility from any other reporting requirement; requiring the
 5 Department to adopt certain regulations by a certain date; ~~prohibiting the~~
 6 ~~Department from adopting certain regulations; authorizing requiring the~~
 7 Department of State Police, in consultation with the Department, to adopt
 8 certain regulations by a certain date; providing that this Act does not apply in
 9 local jurisdictions that adopt standards that are at least as stringent as certain
 10 standards required by this Act; making the provisions of this Act severable; and
 11 generally relating to the reporting and regulation of certain hazardous
 12 materials and related facilities.

13 BY repealing and reenacting, with amendments,
 14 Article - Environment
 15 Section 7-604
 16 Annotated Code of Maryland
 17 (1996 Replacement Volume and 2003 Supplement)

18 BY adding to
 19 Article - Environment
 20 Section 7-701 through ~~7-710~~ 7-709, inclusive, to be under the new subtitle
 21 "Subtitle 7. Hazardous Material Security"
 22 Annotated Code of Maryland
 23 (1996 Replacement Volume and 2003 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article - Environment**

27 7-604.

28 (a) Notwithstanding § 7-219 of this title, there is a Community
 29 Right-to-Know Fund.

30 (b) The Department shall use the Community Right-to-Know Fund for:

31 (1) The collection, management, and analysis of data received by the
 32 Department from an owner or operator of a facility that is required by the federal Act
 33 or any regulations adopted under the federal Act to provide information to the State
 34 under § 7-602(b) of this subtitle;

35 (2) Enforcement by the State of this subtitle or the federal Act; and

36 (3) Planning and training functions performed by the State or local
 37 instrumentalities as may be required by the federal Act including:

- 1 (i) Conducting:
- 2 1. Incident response activities;
- 3 2. Shelter in place and evacuation planning;
- 4 3. Railroad, maritime, and transportation exercises; and
- 5 4. Emergency response activities;
- 6 (ii) The collection of hazardous material commodity flow
7 information;
- 8 (iii) The acquisition and maintenance of chemical reference
9 materials;
- 10 (iv) Public outreach activities including case studies, school safety,
11 and emergency planning for citizens; and
- 12 (v) Participation by emergency response personnel in related
13 training conferences on local, State, and federal regulatory and compliance updates,
14 incident command, and crisis control.
- 15 (c) The Department shall:
- 16 (1) Establish an annual fee for facilities required to report to the State or
17 its instrumentalities under the federal Act; and
- 18 (2) Base the annual fee on the cost to the Department for processing the
19 information submitted to the Department under § 7-602(b) of this subtitle.
- 20 (d) Except as provided in subsection (f) of this section, beginning March 1,
21 2003 and each year thereafter:
- 22 (1) The annual fee shall be paid to the Department no later than March
23 1 of each year for reports required under § 312 of the federal Act; and
- 24 (2) The annual fee shall be paid to the Department no later than July 1
25 of each year for reports required under § 313 of the federal Act.
- 26 (e) Subject to subsection (b) of this section, the annual fee assessed by the
27 Department under this section may not exceed \$1,000 in any calendar year for a
28 responsible person who owns or operates one or more facilities in Maryland.
- 29 (f) (1) The following persons and entities are exempt from paying any fees
30 under this section:
- 31 (i) Governmental agencies;
- 32 (ii) Farmers whose principal residence is located on their farm;

1 (iii) Charitable organizations as defined under § 6-101(d) of the
2 Business Regulation Article;

3 (iv) Petroleum retail facilities with less than 75,000 gallons of
4 gasoline and less than 100,000 gallons of diesel or similar fuel; and

5 (v) Entities that are exempt from reporting under the federal Act.

6 (2) The Secretary may adopt regulations that exempt additional entities
7 from the requirement to pay the fees to the Department required by this section.

8 (g) Any fee or penalty collected or imposed under this subtitle shall be paid by
9 the Department to the Fund.

10 (h) The Department shall use 50% of the moneys in the Fund to provide grants
11 to local emergency planning committees.

12 (i) (1) A local emergency planning committee that receives moneys under
13 subsection (h) of this section shall provide an annual report to the Department
14 documenting the manner in which the moneys were expended by the local emergency
15 planning committee.

16 (2) A local emergency planning committee shall spend the moneys
17 provided under subsection (h) of this section for activities identified under subsection
18 (b) of this section or for any other activity which the Department determines is
19 consistent with the purposes of this subtitle.

20 (j) Moneys allocated to a local emergency planning committee under
21 subsection (h) of this section that are not utilized by the local emergency planning
22 committee within 1 year after receipt of the allocation shall be remitted to the
23 Department and may be reallocated by the Department.

24 (k) (1) After providing reasonable notice, the Secretary may require a local
25 emergency planning committee to provide the Department with information or
26 documentation relating to the utilization of moneys allocated under subsection (h) of
27 this section.

28 (2) The Secretary may require an independent audit of any local
29 emergency planning committee not found to be in compliance with paragraph (1) of
30 this subsection.

31 (l) (1) The Secretary may recover any inappropriate expenditure made by a
32 local emergency planning committee from the Fund.

33 (2) Any expenditure made by a local emergency planning committee that
34 is inconsistent with subsection (i) of this section or the purpose of this subtitle shall
35 be:

36 (i) Reimbursed by the local emergency planning committee to the
37 Department; and

1 (ii) Remitted to the Fund within 90 days after receipt by the local
2 emergency planning committee of a notice from the Department indicating that the
3 expenditure is inappropriate.

4 (M) NOTWITHSTANDING SUBSECTIONS (B) THROUGH (L) OF THIS SECTION,
5 THERE SHALL BE A SEPARATE ACCOUNT WITHIN THE COMMUNITY RIGHT-TO-KNOW
6 FUND CONSISTING OF ALL FEES COLLECTED BY THE DEPARTMENT UNDER TITLE 7,
7 SUBTITLE 7 OF THIS ARTICLE OR FUNDS APPROPRIATED IN THE STATE BUDGET FOR
8 ALL COSTS INCURRED BY THE DEPARTMENT FOR THE PURPOSES STATED UNDER §
9 7-706 OF THIS TITLE.

10 SUBTITLE 7. HAZARDOUS MATERIAL SECURITY.

11 7-701.

12 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
13 INDICATED.

14 (B) (1) "FACILITY" MEANS A LOCATION IN THE STATE IN WHICH A
15 HAZARDOUS MATERIAL IS STORED, DISPENSED, USED, OR HANDLED.

16 (2) "FACILITY" DOES NOT INCLUDE:

17 (I) A RAILROAD, RAIL TRAIN, OR RAIL CAR REGULATED UNDER 49
18 U.S.C. SUBTITLE IV, PART A; OR

19 (II) A RETAIL DISTRIBUTOR WHOSE PRINCIPAL BUSINESS IS TO
20 SELL OR OFFER FOR SALE, AT THE RETAIL LEVEL, COMMERCIAL FERTILIZER
21 INTENDED FOR AGRICULTURAL USE.

22 (C) (1) "HAZARDOUS MATERIAL" MEANS A REGULATED SUBSTANCE AS
23 DEFINED IN 40 C.F.R. 68.130 IN EXCESS OF THE THRESHOLD QUANTITY SPECIFIED IN
24 THAT REGULATION.

25 (2) "HAZARDOUS MATERIAL" DOES NOT INCLUDE A SUBSTANCE THAT IS
26 EXEMPT OR EXCLUDED UNDER 40 C.F.R. 68.125 AND 40 C.F.R. 68.126.

27 7-702.

28 (A) THIS SUBTITLE APPLIES TO ANY PERSON WHO OWNS, OPERATES,
29 MAINTAINS, OR CAUSES TO OPERATE OR MAINTAIN A FACILITY IN THIS STATE.

30 (B) THIS SUBTITLE DOES NOT APPLY IN A LOCAL JURISDICTION THAT ADOPTS
31 HAZARDOUS MATERIAL SECURITY STANDARDS THAT ARE AT LEAST AS STRINGENT
32 AS THE STANDARDS UNDER § 7-703 OF THIS SUBTITLE.

33 (C) ON OR BEFORE OCTOBER 1, 2005, AND AT LEAST EVERY 5 YEARS
34 THEREAFTER, A PERSON SUBJECT TO THIS SUBTITLE SHALL:

1 (1) ANALYZE THE SECURITY OF THE FACILITY IN ACCORDANCE WITH
2 THE HAZARDOUS MATERIAL SECURITY STANDARDS ADOPTED BY THE DEPARTMENT
3 UNDER § 7-703 OF THIS SUBTITLE;

4 (2) SUBMIT TO THE DEPARTMENT THE ANALYSIS REQUIRED UNDER
5 PARAGRAPH (1) OF THIS SUBSECTION, INCLUDING POTENTIAL SECURITY THREATS,
6 VULNERABILITIES, AND CONSEQUENCES TO THE FACILITY AND ANY CHANGES
7 TAKEN TO IMPLEMENT THIS SUBTITLE AT THE FACILITY; AND

8 (3) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, SUBMIT
9 THE A FEE REQUIRED UNDER THIS SUBTITLE OF \$2.500 TO THE DEPARTMENT.

10 (D) COUNTIES AND MUNICIPAL CORPORATIONS ARE EXEMPT FROM
11 SUBMITTING THE FEE REQUIRED UNDER SUBSECTION (C)(3) OF THIS SECTION.

12 (E) THE FEES RECEIVED UNDER SUBSECTION (C)(3) OF THIS SECTION SHALL
13 BE PAID INTO A SEPARATE ACCOUNT IN THE COMMUNITY RIGHT-TO-KNOW FUND.

14 (F) (1) THE ANALYSES PREPARED AND ~~NOTIFICATIONS~~ SUBMISSIONS
15 REQUIRED UNDER SUBSECTION (C) OF THIS SECTION, OR DOCUMENTS PREPARED
16 UNDER § 7-703 OF THIS SUBTITLE TO COMPLY WITH SUBSECTION (C) OF THIS
17 SECTION, AND THEIR SUPPORTING DOCUMENTS ARE CONFIDENTIAL AND ARE NOT
18 PUBLIC DOCUMENTS THAT MAY BE DISCLOSED WITHOUT PRIOR WRITTEN
19 PERMISSION OF THE PERSON SUBJECT TO THIS SUBTITLE IN ACCORDANCE WITH
20 TITLE 10, SUBTITLE 6 OF THE STATE GOVERNMENT ARTICLE.

21 (2) (I) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, THE
22 DEPARTMENT OF STATE POLICE SHALL DISCLOSE INFORMATION RELATED TO ANY
23 INVESTIGATION AND ENFORCEMENT ACTION TAKEN AGAINST A FACILITY UNDER
24 THIS SUBTITLE IF THE DEPARTMENT OF STATE POLICE DETERMINES THAT
25 DISCLOSURE WOULD NOT RESULT IN ANY ADDITIONAL RISK TO THE PUBLIC.

26 (II) IF THE DEPARTMENT OF STATE POLICE MAKES THE
27 DETERMINATION TO DISCLOSE INFORMATION UNDER THIS PARAGRAPH, THE
28 DEPARTMENT OF STATE POLICE SHALL DETERMINE WHICH DOCUMENTS RELATED
29 TO THE ENFORCEMENT ACTION AND INVESTIGATION MAY BE DISCLOSED AS PUBLIC
30 DOCUMENTS SUBJECT TO TITLE 10, SUBTITLE 6 OF THE STATE GOVERNMENT
31 ARTICLE.

32 7-703.

33 ~~(A)~~ ON OR BEFORE JANUARY 1, 2005, THE DEPARTMENT SHALL ADOPT
34 HAZARDOUS MATERIAL SECURITY STANDARDS THAT REQUIRE:

35 (1) PRIORITIZATION AND PERIODIC ANALYSIS, USING ACCEPTED
36 METHODOLOGIES, OF POTENTIAL SECURITY THREATS, VULNERABILITIES, AND
37 CONSEQUENCES;

38 (2) DEVELOPMENT AND IMPLEMENTATION OF SECURITY MEASURES
39 COMMENSURATE WITH RISKS;

1 (3) DOCUMENTATION OF SECURITY MANAGEMENT PROGRAMS,
2 PROCESSES, AND PROCEDURES;

3 (4) TRAINING, DRILLS, AND GUIDANCE FOR EMPLOYEES, CONTRACTORS,
4 SERVICE PROVIDERS, AND OTHERS, AS APPROPRIATE, TO ENHANCE AWARENESS AND
5 CAPABILITY;

6 (5) COMMUNICATIONS, DIALOGUE, AND EXCHANGE OF INFORMATION
7 WITH EMPLOYEES, COMMUNITIES, AND GOVERNMENT AGENCIES AND OFFICIALS;

8 (6) INTERNAL AUDITS TO ASSESS SECURITY PROGRAMS AND
9 PROCESSES AND THE IMPLEMENTATION OF CORRECTIVE MEASURES; AND

10 (7) THIRD-PARTY VERIFICATION THAT OWNERS AND OPERATORS HAVE
11 IMPLEMENTED THE PHYSICAL SECURITY MEASURES THAT HAVE BEEN IDENTIFIED
12 UNDER THE REQUIRED PERIODIC ANALYSIS OF POTENTIAL SECURITY THREATS,
13 VULNERABILITIES, AND CONSEQUENCES.

14 ~~(B) INSTEAD OF THE STANDARDS REQUIRED UNDER SUBSECTION (A) OF THIS~~
15 ~~SECTION, THE DEPARTMENT MAY ADOPT HAZARDOUS MATERIAL SECURITY~~
16 ~~STANDARDS THAT CONFORM TO A NATIONAL INDUSTRY SECURITY CODE THAT IS AT~~
17 ~~LEAST AS STRINGENT AS THE STANDARDS PROVIDED IN SUBSECTION (A) OF THIS~~
18 ~~SECTION.~~

19 7-704.

20 (A) THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF STATE
21 POLICE, SHALL AUDIT A FACILITY, THROUGH AN INSPECTION OR OTHER
22 INVESTIGATION, TO VERIFY THE ANALYSIS SUBMITTED IN ACCORDANCE WITH §
23 7-702(C)(2) OF THIS SUBTITLE.

24 (B) IF THE DEPARTMENT, THROUGH AN AUDIT, FINDS THAT THE FACILITY IS
25 NOT IN COMPLIANCE WITH THE HAZARDOUS MATERIAL SECURITY STANDARDS OF
26 THIS SUBTITLE, THE DEPARTMENT SHALL REFER THE VIOLATION TO THE
27 DEPARTMENT OF STATE POLICE FOR ENFORCEMENT.

28 7-705.

29 (A) ~~(+)~~ SUBJECT TO SUBSECTION (B) OF THIS SECTION, ON OR BEFORE
30 JANUARY 1, 2005, THE DEPARTMENT SHALL ADOPT REGULATIONS TO CARRY OUT
31 THE PROVISIONS OF THIS SUBTITLE.

32 ~~(2)~~ (B) THE DEPARTMENT MAY NOT OF STATE POLICE, IN
33 CONSULTATION WITH THE DEPARTMENT, SHALL ADOPT A REGULATION OR A PART
34 OF A REGULATION TO ENFORCE COMPLIANCE BY A FACILITY WITH THE HAZARDOUS
35 MATERIAL SECURITY STANDARDS ADOPTED UNDER THIS SUBTITLE.

36 ~~(3)~~ ~~(4)~~ THE DEPARTMENT SHALL ADOPT REGULATIONS THAT
37 REQUIRE COLLECTION OF A FEE FOR EACH FACILITY REQUIRED TO REPORT TO THE
38 DEPARTMENT UNDER THIS SUBTITLE.

1 (II) ~~THE FEE SHALL BE BASED ON:~~

2 1. ~~THE AMOUNT OF HAZARDOUS MATERIALS STORED AT~~
3 ~~THE FACILITY; AND~~

4 2. ~~THE COST TO THE DEPARTMENT TO CARRY OUT THE~~
5 ~~PURPOSES UNDER § 7-706 OF THIS SUBTITLE.~~

6 (III) ~~IN ANY FISCAL YEAR, FEES COLLECTED UNDER THIS SECTION~~
7 ~~MAY NOT EXCEED THE ACTUAL COSTS TO THE DEPARTMENT TO CARRY OUT THE~~
8 ~~PURPOSES OF § 7-706 OF THIS SUBTITLE.~~

9 7-706.

10 FUNDS IN THE COMMUNITY RIGHT-TO-KNOW FUND UNDER § 7-604(M) OF THIS
11 TITLE SHALL BE USED BY THE DEPARTMENT FOR THE FOLLOWING PURPOSES:

12 (1) PROCESSING THE INFORMATION SUBMITTED TO THE DEPARTMENT
13 UNDER THIS SUBTITLE; AND

14 (2) REGULATION OF THIS SUBTITLE, INCLUDING AUDITING A FACILITY
15 FOR COMPLIANCE WITH THE PROVISIONS OF THIS SUBTITLE.

16 7-707.

17 A PERSON MAY NOT KNOWINGLY SUBMIT FALSE INFORMATION UNDER THIS
18 SUBTITLE.

19 7-708.

20 (A) A PERSON WHO VIOLATES THIS SUBTITLE OR ANY REGULATION ADOPTED
21 UNDER THIS SUBTITLE IS SUBJECT TO A ~~FINE~~ CIVIL PENALTY NOT EXCEEDING \$1,000
22 PER VIOLATION.

23 (B) EACH DAY THAT A VIOLATION CONTINUES IS A SEPARATE VIOLATION.

24 7-709.

25 THIS SUBTITLE DOES NOT RELIEVE ANY FACILITY FROM ANY REQUIREMENT
26 UNDER ANY FEDERAL, STATE, OR LOCAL LAW OR ORDINANCE TO REPORT TO UNITS
27 OF FEDERAL, STATE, OR LOCAL GOVERNMENT.

28 ~~7-710.~~

29 ~~THE DEPARTMENT OF STATE POLICE MAY ADOPT REGULATIONS TO ENFORCE~~
30 ~~COMPLIANCE BY A FACILITY WITH THE HAZARDOUS MATERIAL SECURITY~~
31 ~~STANDARDS ADOPTED UNDER THIS SUBTITLE.~~

32 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this
33 Act or the application thereof to any person or circumstance is held invalid for any
34 reason in a court of competent jurisdiction, the invalidity does not affect other

1 provisions or any other application of this Act which can be given effect without the
2 invalid provision or application, and for this purpose the provisions of this Act are
3 declared severable.

4 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2004.